

REMARKS

The Examiner has rejected Claims 32-49 under the judicially created doctrine of double patenting over Claim 1 of U.S. Patent No. 6,418,467 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. In response, applicant has submitted herewith a terminal disclaimer.

The Examiner has further rejected Claims 32-49 under 35 U.S.C. 102(b) as being anticipated by Herbert, U.S. Patent No.: 5,333,183. Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove. Specifically, applicant has amended each of the independent claims to include some of the subject matter of Claim 46. In the most recent action, the Examiner states that Claim 46 is substantially the same as Claims 32-37, and is thus rejected for the reasons set forth for those in the rejection of Claims 32-37. This is simply incorrect.

For example, applicant teaches and claims in each of the independent claims "collecting network communications usage information in real-time from a plurality of network devices at a plurality of layers utilizing multiple gatherers each including a plurality of information source modules each interfacing with one of the network devices and capable of communicating using a protocol specific to the network device coupled thereto, the network devices selected from the group consisting of routers, switches, firewalls, authentication servers, web hosts, proxy servers, netflow servers, databases, mail servers, RADIUS servers, and domain name servers, the gatherers being positioned on a segment of the network on which the network devices coupled thereto are positioned for minimizing an impact of the gatherers on the network."

Applicant contends that with such claimed features, Herbert is clearly distinguished. Herbert, for example, fails to disclose, teach or suggest "collecting network communications usage information in real-time from a plurality of network devices at a plurality of layers." By collecting network communications usage information at more than one layer, more comprehensive reporting is permitted.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. This criteria has simply not been met by the Herbert reference, especially in view of the amendments made hereinabove.

Still yet, applicant emphasizes that there are numerous additional features in Claim 46 that distinguish the Herbert reference, which have not been fully considered by the Examiner. For example, see the following limitations:

“defining a user-defined enhancement procedure utilizing the central event manager,” and
“enhancing the aggregation with the gatherers in accordance with the defined enhancement procedure;”

“normalizing the network communications usage information with the gatherers by excluding fields not required by a central event manager coupled to the gatherers;”

“time stamping the data records; storing the time stamped data records in tables in a central database coupled to the central event manager at a user-specified interval; deleting the stored data records upon the cessation of a predetermined amount of time after the storage utilizing the timestamp.”

A specific prior art showing of the foregoing limitations or an indication of allowable subject matter is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. For payment of the fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account

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No. 50-1351 (Order No. XACTP014A). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,

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